

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Appln. No. 10/006,137

REMARKS

Claims 1-9 are pending in the present application. As will be discussed below, Claims 1, 2 and 3 have been amended and Claim 9 has been added. Support for the amendments to Claims 1-3 is provided by the paragraph bridging pages 6 and 7 of the specification. This portion of the specification also provides support for new Claim 9. No new matter has been added.

Accordingly entry of the present Amendment is requested.

Referring to page 2 of the Office Action, Claims 1 and 2 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,545,424 to Nakatsu *et al.* In addition, Claims 3-8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakatsu *et al.* in view of WO 97/02273 to Kupper *et al.*

With respect to Claims 1 and 2, the Examiner asserts that Nakatsu *et al.* anticipates the claimed invention because it teaches a composition comprising a benzaldehyde derivative and a cooling agent. The Examiner refers to column 4, lines 22-29, in support of this assertion.

With respect to the obviousness rejection of Claims 3-8, the Examiner asserts that Nakatsu *et al.* teaches all of the claimed invention with the exception of "the specific recitation of additional components." Kupper is relied upon to assertedly disclose the conventional combination of warming and cooling agents. In view of the foregoing, the Examiner asserts that it would have been obviousness to add additional warming agents to the composition taught by Nakatsu *et al.* because "the combination of warming and cooling agents is conventional in the art."

Applicants respectfully traverse this rejection for the following reasons.

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The present invention is directed to a warming composition for food and drink or for oral care preparations which exhibits an excellent and long-lasting warming effect and causes no or little irritation to mucous membranes. The present invention is also directed to a flavor composition for food and drink or for oral care preparations which includes the warming composition, and beverages or oral care preparations which contain the warming composition or the flavor composition.

While substances which provide a sensation of warmth on application are known, conventional warming agents often cause strong irritation of mucous membranes or exhibit insufficient warming effects, and those having high warming effects are of short duration or, when used in a reduced amount, have insufficient warming effects or an insufficient duration of effect.

The present invention provides a warming composition for food and drink and for oral care preparations which avoids the disadvantages of the known compositions, by comprising a cooling agent and a compound represented by Formula I.

Nakatsu *et al.* teach 4-(1-menthoxymethyl)-2-phenyl-1,3-dioxolane or a derivatives thereof that are useful in flavor compositions. However, the portion of Nakatsu *et al.* referred to by the Examiner in the Office Action (column 4, lines 22-29), does not anticipate the present claimed invention. Specifically, column 4, lines 22-29, refers to compound 3 of Table 1 of Nakatsu *et al.* It also refers to an additional patent by (U.S. Patent No. 4,459,425) as disclosing 3-(1-menthoxy)- 1,2-propanediol. It is indicated that this compound is also a flavor or fragrance ingredient which has a menthol-like taste and a cooling effect.

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Nakatsu *et al.* does not teach or suggest a warming composition for food and drink and for oral care preparations which comprises a cooling agent and a compound represented by Formula I, as defined in amended independent Claims 1-3.

Additionally, while Kupper *et al.* may disclose conventional combinations of warming and cooling agents, it does not correct the deficiencies noted above in Nakatsu *et al.*

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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